(9)

Supreme Court, U.S.
FILED
APR 5 2000
CLERK

No. 99-1132

In the

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

CHARLES McARTHUR,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois

REPLY BRIEF FOR PETITIONER

JAMES E. RYAN
Attorney General of Illinois

JOEL D. BERTOCCHI
Solicitor General of Illinois

WILLIAM L. BROWERS
Counsel of Record
COLLEEN M. GRIFFIN
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-4684

Counsel for Petitioner

Printed by Authority of the State of Illinois (P.O. 27491—55—4-5-00)

9 pp

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

ARGUMENT 1

CONCLUSION 6

TABLE OF AUTHORITIES

Cases PAGE(S)

People v. McArthur, 304 Ill. App. 3d 395, 713 N.E.2d 93 (4th Dist. 1999) 1, 3, 4

Segura v. United States, 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984) 1, 2, 3, 4

Additional Authority

LaFave, SEARCH AND SEIZURE, 3rd ed., Vol. III, sec. 6.5(c) (1996) 5

ARGUMENT

Respondent suggests that the Illinois Appellate Court's decision in *People v. McArthur*, 304 Ill. App. 3d 395, 713 N.E.2d 93 (4th Dist. 1999) is not in direct conflict with *Segura v. United States*, 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984), and did not decide that police are prohibited from securing a residence from the outside and barring entry into that residence while a search warrant is being obtained, relying on the *McArthur* language that the action in that case constituted a "constructive eviction." Respondent says that the crux of the *McArthur* decision was that the police illegally seized Mr. McArthur's residence by constructively evicting him, and conducted an illegal search by refusing his requests to re-enter his home without a police officer's immediate presence. However, the question presented here, despite the *McArthur* court's use of the term "constructive eviction" to describe the police action in securing Respondent's residence from the outside and disallowing Respondent to enter the residence, is whether a person can be denied access to his home where it is secured from the outside while a search warrant based on probable cause is being obtained. The *McArthur* court's answer to this question is in direct conflict with *Segura* and needs to be addressed by this Court as it is an important question that needs resolution.[1]

---

[1] Respondent does not dispute that the question presented by Petitioner is an important one or that *Segura* needs to be more defined. Nor does Respondent dispute that the cases which have addressed the question are in conflict with one another, providing another reason for review.

According to Respondent, this is not a case where the police merely secured the residence from the outside to await a warrant based on probable cause, and this case is different because the police not only prohibited Respondent from entering his home, but also entered his residence despite him telling them that they could not come into his home without a warrant. However, Respondent's distinction is irrelevant to the question presented here. The police told Respondent he could not re-enter his home without a police officer with him, since the home was secured from the outside. Without such a restriction the residence could never be considered "secure;" indeed, Respondent admitted that, had he been permitted to enter alone, he would have destroyed the evidence. The Illinois Appellate Court found that the officer's conduct in standing in the doorway while he allowed Respondent to make a telephone call was an "unreasonable search," and Respondent relies heavily on that conclusion in his brief in opposition. Respondent's (and the Appellate Court's) reliance on these limited entries is little more than a red herring; properly considered, the facts of this case present no legitimate legal issue regarding entry. No evidence was observed by the officer during the brief moments he stood in Respondent's doorway, and the outcome of the case would have been no different had the officer simply secured the trailer and refused Respondent any entry, something which, Petitioner contends, would have been entirely permissible under *Segura*. If the securing of Respondent's residence was valid, allowing him to enter was at most a gratuitous act. The police did not go into Respondent's residence and search after being told not to do so.

Respondent also suggests that this case does not conflict with applicable decisions of this Court nor did it decide an important question that should be settled by this Court, relying on the fact that the *McArthur* court relied on precedent from within the State, and also found that no exigent circumstances existed for the warrantless entry into McArthur's home. Whether or not exigent circumstances existed is totally irrelevant if the police action in securing the residence from the outside was allowable under *Segura*. If securing the residence was allowable, then the police searched pursuant to the warrant for which they were waiting. Precedent fr n within the State regarding the fact that police do not have the absolute authority to seize and seal residences while waiting for search warrants is also irrelevant. No one is suggesting absolute authority to seize and seal residences while awaiting a search warrant. Petitioner is suggesting that the *McArthur* opinion is wrong and is in direct conflict with *Segura* and that the extent to which one can secure a residence to await a search warrant based on probable cause, and exactly what possessory interests can be interfered with in pursuit of this under *Segura,* must be determined.

The Illinois Appellate Court's opinion in this case misconstrues and unjustifiably limits this Court's holding in *Segura v. United States*, 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984), and conflicts with the federal and state courts that have considered whether one's possessory interests can be interfered with while police are awaiting a search warrant based on probable cause under *Segura*. Both the majority and the dissent in *Segura* agreed that securing a residence from the outside when probable cause exists may not violate the

Fourth Amendment's prohibition against unreasonable seizures. *Segura*, 468 U.S. at 811-12, 104 S.Ct. at 3388-89, 82 L.Ed.2d at 613 (opinion of Burger, C.J., joined by O'Connor, J.); 468 U.S. at 824 n. 15, 104 S.Ct. at 3396 n. 15, 82 L.Ed.2d at 621 n. 15 (Stevens, J. dissenting, joined by Brennan, Marshall, and Blackmun, JJ). All members of the *Segura* Court agreed that a purely external seizure of a residence and its contents based on probable cause is permitted by the Fourth Amendment. The right of exclusion necessarily flows from the right to seize a residence and its contents from the outside based on probable cause. That this concomitant right exists is clear from the statement that the evidence would have been discovered as if the police had established "a perimeter stakeout to prevent *anyone* from entering and destroying evidence." *Segura*, 104 S.Ct. at 3390 (emphasis added). An external impoundment would, by definition, include some type of possessory interference. This Court must more clearly define the extent that interference is reasonable, as courts, as shown here, are wrongly interpreting *Segura*.

Respondent asserts that Petitioner, without discussing the facts of *Segura*, merely contends that the *McArthur* court wrongly interpreted *Segura*. Respondent then gives a recitation of the facts of *Segura*, but does not suggest how the *McArthur* court correctly interpreted *Segura*. (Brief in Opposition to Petition for Writ of Certiorari, pp. 3-4). Respondent merely suggests that this case only involved whether there was a warrant or exigent circumstances. However, that does not explain the *McArthur* court's misconstruction of *Segura*. The *McArthur* court here found that *Segura* allowed a warrantless seizure and securing of a residence based on

probable cause while obtaining a warrant if one of three situations was present. Citing *LaFave*, the Illinois Appellate Court stated that *Segura* allows denial of access only when the only persons who could claim access: 1) are already in custody; 2) are subject to arrest when they appear; or 3) have consented to remain outside. *McArthur*, 713 N.E.2d at 98. However, the section of *LaFave* cited for this proposition merely was an overview of the cases that actually have addressed the issue, and those cases were limited to their specific facts. *LaFave* went on to say that "[the cases] thus do not unquestionably resolve the issue whether, for example in [citation] the police could have lawfully barred the defendant's mother and brother from entering their own home." *LaFave*, SEARCH AND SEIZURE, 3rd ed., Vol. III, sec. 6.5(c), 363 (1996). The fact that the question is not resolved is the reason that it must be decided by this Honorable Court. While *Segura* does not specifically address the question of the extent to which one's possessory interests can be interfered with to achieve that result, the Illinois Appellate Court's finding of a Fourth Amendment violation is wrong, and this Court must address this important question. This case presents the perfect opportunity for this Court to decide the question.

CONCLUSION

For the aforementioned reasons, Petitioner, the State of Illinois, respectfully requests that this Honorable Court grant *Certiorari*, reverse the decision of the Illinois Appellate Court, Fourth District, and remand for further proceedings.

Respectfully submitted,

JAMES E. RYAN
Attorney General of Illinois

JOEL D. BERTOCCHI
Solicitor General of Illinois

WILLIAM L. BROWERS
Counsel of Record
COLLEEN M. GRIFFIN
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-4684

Counsel for Petitioner